

**Testimony of Chief Dee Ketchum  
Delaware Tribe of Indians, Bartlesville, Oklahoma  
submitted to the  
U.S. Senate Committee on Indian Affairs  
September 18, 2002**

**Regarding the Delaware Tribe's Objections to  
H.R. 2880 - Five Nations Indian Land Reform Act**

**I. Introduction.**

On behalf of the Delaware Tribe of Indians ("Delaware" or "Tribe"), I would like to extend our appreciation for affording the opportunity to express our concerns during the Senate's consideration of the Five Nations Indian Land Reform Act (H.R. 2880). First, I would like to clarify that the Delaware Tribe has always supported the general goal of removing the blood quantum requirements for inheritance of restricted Indian allotments in northeastern Oklahoma. However, the Delaware Tribe, as well as several other federally recognized tribes, have been concerned about provisions in various drafts of the bill which clearly go beyond the bill's intended purpose and could result unintended consequences. We are most appreciative of Senator Inhofe, and his staff, for acknowledging the Tribe's concerns and seeking to develop a bill that will achieve its intended goals in a fair and equitable manner.

**II. Background.**

The Delaware Tribe was removed to the lands within the former Cherokee boundaries in approximately 1867. The Delaware Treaty of 1866 promised the Tribe a new reservation in exchange for removal from its reservation in Kansas. The Tribe's reservation was to be formed on lands to be purchased by the United States from the Choctaws, Chickasaws, Seminoles, Cherokee, or Creeks. Unfortunately, the United States failed to provide the promised reservation and the Delaware Tribe was removed to lands within the former boundaries of the Cherokee Nation. At the time of removal, the Delaware tribal members were also to be afforded all the rights of native Cherokees for which the Tribe paid a large sum of money. The Tribe was also to be afforded 160 acres for each individual Delaware tribal member upon which the Tribe would preserve its tribal organization. Such lands were purchased from the Cherokee Nation at an additional price of \$ 1.00 per acre. During the allotment era thirty years later, the U.S. Supreme Court determined that the Delaware Tribal members had only purchased a life-estate in the lands, and therefore, most Delaware had no right to retain their original 160 acre allotments. The Court

only afforded the original Delaware settlers from Kansas, referred to as the Registered Delawares, the right to retain their 160 acre homesteads during the dissolution of the Cherokee Nation. While most of the Delawares received their allotments by virtue of having purchased all the rights of native Cherokees, the Registered Delawares retained their original 160 acre allotments purchased from the Cherokee Nation. These Registered Delaware allotments were designated by the Dawes Commission as "D- Allotments."

Without question, the many laws relating to the allotments of the Five Civilized Tribes have been applied to the Delaware D-allotments. However, throughout most of the twentieth century, the Bureau did not acknowledge the jurisdiction of any of the Tribes over the restricted fee allotments. Today, the relative jurisdiction of the Cherokee Nation and the Delaware Tribe over these D-allotments, and the right of the Delaware Tribe to acquire trust land within its traditional settlements, remains in dispute.

While the Delaware Tribe has no interest or right in asserting jurisdiction over the lands of the Cherokee Nation or its members, the Tribe vigilantly seeks to preserve what little land base still exists from the land purchase under its 1866 Treaty. On the other hand, the Cherokee Nation wholly resents the 130-year presence of the Delaware Tribe within the traditional Cherokee's settlements and has an interest in securing whatever legislation may further its goal of effectively expelling the Delaware Tribe's presence in eastern Oklahoma.

Thus, while wholly supporting the goal of removing the blood quantum requirements for inheritance of restricted allotments, the Delaware Tribe has expressed objections to various proposed provisions within the Five Nations Land Reform Act that would imply some Congressional intent to divest the Delaware Tribe's jurisdiction over lands purchased from the Cherokee, or its right to exercise jurisdiction over trust lands held for the benefit of the Delaware Tribe or its members.

The Cherokee Nation has also asserted without merit that it maintains jurisdiction over individuals who have descended from the Cherokee Dawes Roll - whether or not those descendants have chosen to become members of the Cherokee Nation. Thus, the Delaware Tribe expressed objections to earlier language that might imply Congressional intent to recognize Cherokee jurisdiction over persons who have not otherwise chosen to be members of the Cherokee Nation.

## **II. Continuing Concerns Regarding H.R. 2880**

In large measure to the efforts of Senator Inhofe, his staff, and the staff of the Senate Committee, most of the more objectionable and extraneous provisions of the earlier drafts of this legislation have been neutralized. However, an unexpected, altered version of the Committee-referred bill was passed on the floor of the House on June 11, 2002 under a suspension of the rules. We, therefore, had little opportunity to review the last-minute alterations. We greatly appreciate the Committee's efforts to assure that our comments are considered before the Senate takes up consideration of the bill. Below is a discussion of the Tribe's continuing concerns with certain limited provisions of H.R. 2880. We ardently request that the Committee consider our concerns before further reporting the bill to the Senate floor.

1. **Section 2, Findings, (3)(B).** The language recognizes *existing* boundaries of the Five Nations. As discussed in the context of the Arkansas Riverbed Settlement Act, we believe than a Court could reasonably find that a Congressional recognition of a tribe's boundaries is sufficient to acknowledge a continuing reservation. Although this language is only in the "findings" section, the purpose of the section is to convey Congressional intent. The Cherokee Nation does not have a reservation. Unless Congress is intending to establish a reservation for the Cherokee Nation or recognize a continued reservation from 1834, we would request that the language be **changed to state, "... the self-sufficiency of individual Indians within the former exterior boundaries of the Five Nations."**

2. **Capitalization of "Individual" before "Indian" throughout the bill.** The use is awkward and creates ambiguity as to whether this is a new term of art. **We request that the Senate consider using a lowercase for "individual" throughout the bill as proposed on the Delaware's red-lined version.** Further, consideration might be given to **deleting "Individual" before "Indian" in Section 4, Definitions.** The definition and use of the term would then be consistent with prior legislation regarding the lands of Five Civilized Tribes.

3. **Section 204(a)(3) Rule of Construction.** This section provides an exception to involuntary partition of *trust lands* in which a tribe may have an interest - but specifically limits the exception to each of the Five Nations. The Five Nations bill ostensibly is intended to address restricted allotment issues. This particular provision only applies to trust lands, and therefore, should be applicable to the other six federally recognized tribes residing in northeastern Oklahoma. **We would therefore request that the provision be modified to state, "are held in trust for an Indian Nation or other Indian Tribe."**

4. **Section 408. Rule of Construction.** This section states that nothing in the Act shall be construed to affect the rights of individual Indians to take land into trust under other federal laws relating to the acquisition of trust property. By only referring to individual Indians and not to Tribes, this provision could be construed as intentionally excluding any protections for the other six Tribes. **We would request that the provision be amended to read, "affect the rights of individual Indians or other Indian tribes under other Federal laws relating to the acquisition and status of trust property. . . ."**

### III. Conclusion.

The above requested modifications are necessary to assure that the expressed goals of reforming the inequitable laws governing the restricted allotments in eastern Oklahoma are preserved - without creating new and unintended inequities for other sovereign Tribes. I thank you again for the opportunity to express the Delaware Tribe's concerns and urge that the Committee consider our requested modifications before further moving the bill to the Senate floor.